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DUTY OF FEDERAL GOVERNMENT TO PROSECUTE CONTEMPT PROCEEDINGS IN CIVIL CASES.

[EDITORIAL NOTE.—The subjoined correspondence between Mr. A. Leo Weil ('76-9), of Pittsburg, Pa., and the Solicitor General of the United States, seems well worth preserving in permanent form. The question at issue is whether it is the duty and policy of the federal government to prosecute contempt proceedings for a willful breach of the injunction of a federal equity court in a civil case between private persons, where the plaintiff is no longer interested in the enforcement of obedience of the injunction by reason of the circumstance that its plant has been shut down and its operation abandoned because of the failure of the defendants to obey the injunction order. The operations of the plaintiff corporation were on an extensive scale, and there were a large number of defendants (strikers)—circumstances which tended to give wide publicity to the case and to the contempt on the part of the defendants. These circumstances, as Mr. Weil argues, make it especially important that the government should intervene in order to vindicate the dignity of the courts.]

PITTSBURGH, PA.,
FEBRUARY, 2, 1914.

*To the Council of the American Judicature Society, and to the
Members of the American Bar Association.*

GENTLEMEN: Is it the duty of Government to maintain respect for its laws by instituting proceedings to punish for contempt those who have refused to obey the decrees of its courts, where such decrees were made to prevent lawlessness and preserve order?

I submit for your consideration the following letters exchanged by me with the Department of Justice at Washington (a formal application with transcript of proceedings and evidence having been filed), which would seem to indicate that the Department has answered this question in the negative. This communication is an appeal from that decision to the bench and bar of this country.

In my opinion, this attitude of the Government must be changed, if contempt for our courts and the administration of

justice is not to be further increased from its already alarming proportions, to an extent which will encourage riot, disorder, and anarchy.

Fraternally,

A. LEO WEIL.

*Hon. John W. Davis, Solicitor General of the United States,
Washington, D. C.*

SIR: The attached brief of authorities, which I agreed to send, would seem to indicate, not only that the United States Government has the right to proceed in its own name against parties guilty of contempt in disobeying the orders and decrees of its courts, but that such procedure in the name of the United States by its own law officers is the better practice. The facts and circumstances that have been called to your attention in the application filed, I would suggest, present a case which peculiarly calls for intervention by the Government on its own account and in its own name and by its own law officers:

First. We have a finding by the judge of a federal court convicting defendants of willful and contemptuous disobedience of the injunction awarded by the court, and that, too, of a public nature, involving the peace and order of a whole community, and leading to riot and bloodshed.

Second. We have parties who were directly interested in procuring the injunction and in enforcing obedience thereto, no longer interested, because their plant has been shut down and its operation abandoned on account of their failure to obtain the protection of the law, in that the Government has so far neglected the enforcement of the decrees of its courts.

Third. We have a case in which a failure to punish, if persisted in, because of the public character of the offence and the knowledge thereof by so large a number, will bring into disrepute and disrespect, if not contempt, the administration of justice by the federal courts.

Fourth. If respect for law, which is the line of demarcation between civilization and barbarism, is to obtain in this country, those entrusted with its administration have the duty imposed to so act that a willful disobedience of the orders of court, lead-

ing to riot and outrage; the cessation of industrial activity resulting in great financial hardship to a community; the loss in wages of nearly a hundred thousand dollars a month to employees anxious to work, shall not be supinely tolerated by a virile government. The fact that the punishment for the contempt, if the Government now proceeds, will result in no advantage to the private litigant who obtained the injunction, is a greater reason why the Government, disregarding such private interests, should give notice that it will protect its courts from any contemptuous disregard of their orders and their decrees, whether the private interests wish it or not.

Fifth. If the Government, upon its own motion and in its own name will institute these proceedings to punish for contempt, and will prosecute the same, it will thereby teach large numbers, who are at this time prone to consider all law as impotent, that in this country no man with impunity shall take upon himself the responsibility of disregarding the solemn decrees and formal orders of courts of competent jurisdiction, and the effect will be the greater, the lesson the better, the restraining influences against commission of like offences the stronger, because, while the private individual has no longer an interest, nevertheless the Government still has and always will have the interest and the purpose to uphold the dignity of its courts and the sanctity of its law.

I know of no greater good this administration can do, however much the great expectations of its friends may be realized, than to restore that respect for law and order, which unfortunately has been to a considerable extent undermined, and without which no government is secure and no rights of property and person are safe.

Respectively submitted,

A. LEO. WEIL.

WASHINGTON, D. C.,
NOVEMBER 25, 1913.

Mr. A. Leo. Weil, Pittsburgh, Pa.

SIR: The request submitted by yourself and others that the Government should undertake the prosecution of persons charged

to be guilty of contempt in the above styled cause has been carefully considered.

From the papers you submit it would seem that the violation of the court's order was such as to well deserve the punishment which it would have received but for the ruling of the court on the sufficiency of the moving papers; but since the proceedings were dismissed without prejudice to their reinstatement by the plaintiff company, or by the United States, or the court itself, it cannot be said that the intervention of the Government is necessary to prevent a failure of justice. Your request, therefore, must be considered with reference to the general policy involved, which raises questions much broader than the individual case.

Unquestionably if the course you suggest is pursued, similar requests will be preferred from time to time, based upon the precedent so established, with the ultimate result that the conduct of such proceedings by the Government through its prosecuting officers will become the rule rather than the exception. As Judge Sater remarks in the course of his opinion in the present case:

"My attention has not been directed to any contempt proceeding arising out of an order made in the main cause of a purely civil character in which the government's counsel has appeared to prosecute, even though the prosecution was for distinctively criminal contempt."

If instances can be cited to the contrary, it certainly has not been the general practice, and it does not seem to me desirable that it should become so.

Of course, it is a matter of the highest public moment that the courts should be respected and that those who disobey their orders should be promptly and effectively punished, but is it not better that reliance should be placed in the future as in the past upon the readiness of parties in interest to bring to the attention of the court any acts of disobedience and the willingness of the judges to do their duty by enforcing the orders which they enter? The inconveniences—to use no stronger word—which would result if the Department of Justice were to assume the burden of instituting proceedings in contempt in every litiga-

tion between private parties where the order of the court had been disobeyed are obvious. Nor would it in my judgment aid the course of justice as effectively as the present practice.

These considerations, which, as I repeat, have nothing to do with the merits of the instant case, compel me to refuse to instruct the district attorney as you request.

I am authorized to say that the Attorney General concurs in the views herein expressed.

May I ask you to be good enough to advise your associate counsel and others in interest of the Department's attitude in the matter?

Very respectfully,

JNO. W. DAVIS,
Solicitor General.

PITTSBURGH, PA.,
DECEMBER 11, 1913.

Hon. John W. Davis, Solicitor General, Washington, D. C.

SIR: I acknowledge receipt of your letter in which you state:

"The request submitted by yourself and others that the Government should undertake the prosecution of persons charged to be guilty of contempt in the above styled cause has been carefully considered."

I note that you refuse to instruct the District Attorney as I request. I note that the reason you give for this refusal is not the want of power, but "it certainly has not been the general practice, and it does not seem to me desirable that it should become so."

I note your statement:

"From the papers you submit it would seem that the violation of the court's order was such as to well deserve the punishment which it would have received but for the ruling of the court on the sufficiency of the moving papers; but since the proceedings were dismissed without prejudice to their reinstatement by the plaintiff company or by the United States, or the court itself, it cannot be said that the intervention of the Government is necessary to prevent a failure of justice."

I note your observation:

"Of course, it is a matter of the highest public moment that the courts should be respected and that those who disobey their orders should be promptly and effectively punished; but is it not better that reliance should be placed in the future as in the past upon the readiness of parties in interest to bring to the attention of the court any acts of disobedience, and the willingness of the judges to do their duty by enforcing the orders which they enter? The inconveniences—to use no stronger word—which would result if the Department of Justice were to assume the burden of instituting proceedings in contempt in every litigation between private parties where the order of the court had been disobeyed are obvious. Nor would it in my judgment aid the course of justice as effectively as the present practice."

You seem to ignore the facts of the case presented to you, as also the changes taking place in the public sentiment of our times. An industrial plant, employing nine hundred men, has been shut down; the employees are out of work; the mill is idle; this has transpired because the decree of the United States Court was violated (a decree which enjoined interference by force with the employees of such plant), and, notwithstanding the fact that willful and deliberate violation was proven, those found guilty were not punished. The parties in interest, the owners of the mill, having become discouraged with their futile attempts to obtain from the courts protection for their employees, have abandoned all present intention of resuming operations. There is now no party in interest, except the public. The question is: Shall the Government, the orders of whose courts have been thus ignored, stand calmly by, acquiescing, because, as I understand your opinion it would be inconvenient to act, and better to permit the usual practice to prevail, and to rely upon the interest of parties to the cause, to vindicate the supremacy of the law?

I submit, the Government cannot justify its refusal to act upon the "general practice." "General practice" is an inflexible reliance only so long as it keeps step with the world's progress. "General practice" crucified Jesus at Jerusalem, and burned the witches at Salem. Slavish adherence to "general

practice" would have left us still naked in the Garden of Eden. Respect for law and the courts has been to some extent undermined, and if respect is not still diminishing, it certainly is not increasing at this time. Large numbers, because of a want of confidence, are demanding the right to directly participate in government, to initiate legislation, to recall judges, and even to recall judicial decisions.

As to your suggestion of inconvenience, public sentiment no longer regards the convenience of public officials as paramount to public interests.

Moreover, the authorities hold that these proceedings to punish for contempt are in their nature criminal proceedings, and, therefore, like all proceedings to punish for crime, should be conducted by the Government. Such proceedings are in the name of the United States—the Government. Even if Government sometimes *permits* private parties to act, has Government the right to *demand* of private parties that they undertake the performance of the Government's most sacred duty—the enforcement of respect for the orders of its courts? In my opinion, it is extremely doubtful if, in any case, the Government should do more than allow the interested party to assist. I believe that the law officers of the Government, in the public interest, should insist that the Government alone has the right, in a case of this kind, to proceed or to discontinue, to punish or to grant mercy.

If, sir, as you say: "It is a matter of the highest public moment that the courts should be respected, and that those who disobey their orders should be promptly and effectively punished," and if, for any reason, those who have disobeyed the orders of the courts have not been promptly and effectively punished, whether it be the inertia of "the parties in interest;" the fact that such parties have lost their interest; the misfortune of a misdirected judicial astuteness, finding, upon its own motion, pin-pricks in the pleadings; or other cause; then, sir, that "highest public moment" is not, in my judgment, subserved by the Government supinely submitting, because the party who was once in interest does not fit to his Lilliputian stature the Brob-

dingnagian armor of Government, and with the lance of Government, ride forth to right its fight.

If the private interest, because of that interest, or from a sense of public duty, did assume the Government's obligation of enforcing respect for the courts, by moving for the punishment of those who have willfully disobeyed their orders, and failed, the Government is not thereby relieved. It is one of the most imperative duties of the Government, a duty not to be delegated, or escaped, to protect its courts, as much in the inviolability of their orders, as in the persons of their judges. It needs no argument in this generation to prove that all civilization is built upon respect for law; that this respect for law is, in fact, the line of demarcation between civilization and barbarism; but that this respect for law cannot obtain if the orders of the courts are willfully disobeyed.

You say:

"Unquestionably if the course you suggest is pursued, similar requests will be preferred from time to time based upon the precedent so established, with the ultimate result that the conduct of such proceedings by the Government through its prosecuting officers will become the rule rather than the exception."

I say: "Amen; a consummation devoutly to be wished." What more lofty function has Government to perform than the preservation of order, by the enforcement of law?

If, for argument, it be conceded (and I concede it only for argument), that *in the first instance* it were better for the party in interest to initiate the proceedings to punish for contempt, it has been shown in the present case that such party in interest did so proceed, but failed, not because the contempt was not committed and proven; but because the court on its own motion, found some irregularity in the moving papers. It has been shown that the party in interest, being no longer interested, concluded it had performed its full duty, and did nothing further. Under such circumstances is the Government, in the opinion of thoughtful citizens, justified in refusing to do its duty? I repeat that no more sacred obligation rests upon Government than

to preserve the law and order of a community. That law and order cannot be preserved when the solemn decrees of the courts, in the name and by authority of the United States, enjoining acts of violence and of force, are contemptuously disobeyed. Shall not the Government defend itself? Or is it sufficient to implore: "Come, you private interests, and defend me?" Impotent, indeed, is such a government.

We are living in troublous times. The people are taking inventory of their institutions. Courts and constitutions are being weighed in the balance. Many claim they have been found wanting. Veneration—that tribute of youth to age, of thought to experience—is in its ardor abating. Why this unrest, this remedy-seeking, this change-clamoring? May it not be, sir, that Government has been leaving too much to "parties in interest;" that Government has been relying too often upon "parties in interest" to protect the public in interest; that Government has too many times evaded its duty because of the "inconvenience," or the departure from "the general practice," or for other reasons?

Can the citizen be patriotic, when the Government is pusillanimous? Can the individual respect the law when the Department of Justice refuses to enforce the law? Can a man "who is of understanding" fail to recognize that both law and government are deserving of contempt in a country which not only fails, but refuses to attempt, to enforce the orders of its courts, and maintain the order of the community?

Government that permits force and violence to prevail in defiance of specific orders of its courts, without attempt to punish the offenders, sows dragons' teeth from which will spring myriads of armed men to subsequently defy.

I am writing, not as counsel for clients, but as citizen and lawyer, loving country, jealous of its reputation, hopeful of its future

I pray that you will reconsider your opinion.

Very respectfully,

A. LEO WEIL.

PITTSBURGH, PA.,
DECEMBER 11, 1913.

Hon. James C. McReynolds, Attorney General, Washington, D. C.

SIR: I enclose copy of answer I have written to the Solicitor General in reply to his letter, advising me of his reasons for refusing to instruct the District Attorney to proceed as the parties I represented requested.

I am sending to you copy of this answer, because the Solicitor General stated in his letter that you had approved of his conclusions. I send it also because I believe the attitude of the administration, in this matter, is so harmful and its effect for evil so far reaching, that nothing should be left undone by any patriotic citizen to secure a reversal of the policy to which you seem committed. It seems to me that it is a body blow to those who have been seeking to stem the tide of the rising distrust and discontent with the present day administration of our laws and the action of our courts.

Very respectfully,

A. LEO WEIL.

PITTSBURGH, PA.,
DECEMBER 11, 1913.

To His Excellency, the President of the United States, Washington, D. C.

SIR: I enclose for your consideration my answer to the letter of the Solicitor General (concurred in by the Attorney General), in which the Department of Justice declined to instruct the United States District Attorney in Ohio to proceed against parties found guilty of contempt of court, in disobeying the orders of the federal court.

The matter, in my opinion, is so grave; the attitude of the administration so pregnant with evil; the policy declared so likely to contribute to the current distrust of and discontent with the administration of our laws, and the action of our courts, that I feel I would be remiss in my duty as a citizen if I did not seek in every way possible to avert the calamity of the continuation

of such attitude and policy. The very intensity of my feeling warns me to proceed in this campaign only after calm reflection; after first frankly and fairly communicating with the Department of Justice and with yourself. I am no longer acting in this matter as counsel, but as citizen. I have no interest save a desire to serve my country by insisting upon the government demanding respect for the orders of its courts, and thus procuring the enforcement of its laws.

Very respectfully,

A. LEO WEIL.

WASHINGTON, D. C.,
DECEMBER 15, 1913.

Mr. A. Leo Weil, Frick Building, Pittsburgh, Pa.

SIR: I beg to acknowledge your letter of December 11, the contents of which have been duly considered. I have given no little thought to this matter, both before and since the receipt of your communication, and can only say that further reflection has confirmed me in the opinion I have already expressed to you. I am quite satisfied that the public interests would not be well served by adopting a different course.

I am

Very respectfully yours,

JNO. W. DAVIS,
Solicitor General.

A. Leo Weil.

PITTSBURGH, PA.